IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 299 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NITIBEN CHIMANLAL

Appearance:

MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

MR K.H. KAJI for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. This Reference is made at the instance of the Revenue for our opinion on the following question of law for the assessment year 1974-75:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in setting aside the order dated 19.9.1977 of the Appellate Asstt. Commissioner dismissing the Appeal as infructuous and after condoning the delay remitting the matter for deciding the appeal in view of the restoration of ITO's order consequent to Tribunal's order dated 12.6.1978?"

2. The respondent assessee transferred land admeasuring 1026 sq. yds. of village Madalpur for a sale price of Rs.45,000/-. The ITO asked the assessee to explain as to why the prevailing fair market value of land at not less than Rs.90 per sq. yard should not be substituted for the sale price shown by the assessee at Rs.15/- per sq. yd. Ultimately the ITO finalised the assessment by adopting fair market value of land at Rs.90/- and determined the capital gains accordingly.

3. The assessee challenged the order before the Appellate Asst. Commissioner.

4. In the meantime, the CIT (Appeals) initiated proceedings under Section 263 of the Act observing that fair market value of the land on the date of sale exceeded by more than 15% of the full value of consideration declared by the assessee, and therefore, the ITO ought to have applied the provisions of Section 52 of the Act, set aside the order of ITO and directed him to make a fresh assessment after applying properly the provisions of Section 52. Against the said order of the CIT (Appeals), the assessee preferred an Appeal before the Tribunal. The said Appeal came to be allowed on the ground that the burden of proving that the assessee had understated the price in the sale document was on the Revenue but there was no material or evidence in the possession of the Department to discharge the burden. Ultimately, the order of the Tribunal came to be confirmed by this Court in assessee's own case reported in (1994) 209 ITR 527 which was decided on September 17, 1993.

5. In the meantime, the ITO proceeded to carry out the order of the CIT (Appeals) and that subsequent order also came to be confirmed by the Appellate Assist.

Commissioner. The Tribunal, however, reversed the order of the Appellate Asst. Commissioner and held in favour of the assessee. The present Reference arises from the said order of the Tribunal.

6. In view of the fact that during pendency of this Reference, this Court has already held in assessee's own case reported in (1994) 209 ITR 527 that the Commissioner was not justified in directing the ITO to apply the provisions of Section 52 of the Act, the consequential exercise undertaken by the ITO has by now become redundant. The Reference has accordingly become infructuous.

7. In this set of circumstances, we do not consider it necessary to answer the question referred to us as the controversy raised in this Reference does not survive, in view of the decision of this Court in assessee's own case decided on September 17, 1993.

The Reference is accordingly disposed off.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

[sndevu]